

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

LOWELL BAISDEN, MICHAEL)	
KONING, and ANESTHESIA)	
CONSULTANTS OF NEBRASKA, INC.,)	
a Nebraska corporation,)	
)	
Plaintiffs,)	8:06CV517
)	
v.)	
)	
RON BOURNE, BURT McKEAG,)	MEMORANDUM OPINION
ANDREW CHONTOS and BOB)	
McCHESNEY,)	
)	
Defendants.)	
_____)	

This matter is before the Court on defendants' motion to remand or dismiss (Filing No. 69). Defendants' motion also seeks an order requiring plaintiffs to pay the costs and expenses, including attorneys' fees incurred by defendants in removing and remanding this case.

The Court has previously dismissed the federal RICO claims leaving only state law claims remaining. Title 28, U.S.C. § 1367(c)(3) grants the federal district court discretion to decline to exercise supplemental jurisdiction over a state law claim when the court has dismissed the claims over which the federal court has original jurisdiction. *See, Day v. Board of Regents*, 911 F. Supp. 1228, 1249 (D.Neb. 1995). The United States Supreme Court has stated that "certainly if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed

as well." *United Mine Workers v. Gibb*, 383 U.S. 715, 726, 86 S.Ct. 1130, 1139 (1996). Dismissal of the state claims is not mandatory but is left to the district court's discretion. *Murray v. Wal-Mart, Inc.*, 874 F.2d 555, 558 (8th Cir. 1989).

In determining whether or not to retain supplemental jurisdiction, the Court can consider factors such as judicial economy, convenience, fairness and comity. The Court's independent examination of these factors finds that no factors weigh heavily either in favor of or in opposition to this Court retaining jurisdiction. The Court will utilize its discretion and elect not to retain jurisdiction. Defendants' motion to remand will be granted. The Court will also deny defendants' request to recover fees and costs incurred in prosecuting the removal and remand of this case. A separate order will be entered in accordance with this opinion.

DATED this 31st day of May, 2007.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court